No. 08-539

IN THE

Supreme Court of the United States

REPUBLIC OF IRAQ, *et al.*,

Petitioners,

v.

ROBERT SIMON, *et al.*,

Respondents.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA CIRCUIT

BRIEF OF DR. STEPHEN NEALE AS *AMICUS CURIAE* IN SUPPORT OF RESPONDENTS

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QUESTION PRESENTED

Whether the Republic of Iraq possesses sovereign immunity from the jurisdiction of the courts of the United States for the torture of U.S. civilians and military personnel.

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BRIEF OF DR. STEPHEN NEALE AS *AMICUS CURIAE* IN SUPPORT OF RESPONDENTS

INTEREST OF THE *AMICUS CURIAE*[1]

Amicus curiae Dr. Stephen Neale is Distinguished Professor of Philosophy and Linguistics, and John H. Kornblith Family Chair of the Philosophy of Science and Values, The Graduate Center of the City University of New York. Dr. Neale is a specialist in the philosophy of language. He has written and lectured extensively about language, meaning, and interpretation, and more generally about issues at the intersection of philosophy and linguistics. The principal focus of this work is the nature of the distinction between explicit and implicit content, and the respective roles of grammar, context and pragmatic reasoning in resolving linguistic underdetermination and indeterminacy, Neale has been certified as an expert on behalf of the federal government in the area of information content and the theoretical bases of linguistic classification and the classification of text documents for content in *American Civil Liberties Union v. Gonzales*. *See* 478 F. Supp. 2d 775, 785 (E.D. Pa. Mar. 22, 2007).

This case presents significant issues concerning statutory interpretation and, consequently, presents an opportunity for the Court to use both the tools and results of empirical linguistics and the philoso-

[1] No counsel for party authored this brief in whole or in part, and no such counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than the *amicus curiae*, or his counsel, made a monetary contribution intended to fund its preparation or submission. The parties have consented to the filing of this brief and such consents are being lodged herewith.

phy of language in determining the plain meaning of statutory language. As a philosopher and linguist with particular interest and expertise in the nature of interpretation, Dr. Neale's expertise could be beneficial to the Court.

SUMMARY OF ARGUMENT

The Court should use the tools and results of linguistic theory, which provide a principled rationale in determining the plain meaning of statutory language. This case provides the perfect opportunity for the Court to do so. The careful application of linguistic tools to the relevant statutory language demonstrates that section 1503 of the Emergency Wartime Supplemental Appropriations Act ("EWSAA") did not, by virtue of its plain meaning, authorize the President to strip the federal courts of jurisdiction to hear cases brought against Iraq pursuant to Section 1605(a)(7) of the Foreign Sovereign Immunities Act ("FISA").

ARGUMENT

I. THIS COURT SHOULD USE THE TOOLS OF AND RESULTS FROM LINGUISTIC THEORY IN DETERMINING THE PLAIN MEANING OF STATUTORY LANGUAGE.

This Court should use the tools and results of linguistic theory in determining the plain meaning of statutory language. Justice Scalia's observation that "Every statute that comes into litigation is to some degree ambiguous," does not undermine the idea of the "plain meaning" of a text.[2] But it does underscore

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[2] *See* Antonin Scalia 22 *Common-Law Courts in a Civil Law System: The Role of the United States Federal Courts in* Interpreting the Constitution and Laws, *in* A Matter of Interpreta-

the need to exercise caution and acknowledge something long acknowledged by linguists, philosophers of language, and cognitive scientists: the plain meaning of a text goes beyond the meanings of the words it contains and beyond what can be obtained by formalistically projecting those meanings through the lens of grammatical structure.[3] As Justice Holmes once put it, a document is sure to have "a certain play in the joints . . . It does not disclose one meaning conclusively according to the laws of language."[4]

The Court seems to assume that in the language of statutes, and more generally in the tortured prose of lawyers or legislators, reliance on linguistic context and pragmatic principles of linguistic interpretation is subordinate to what the Court deems is the "plain meaning." According to linguistic theory, this would be wrong.[5] Certainly, the lawyer and the legislator both aim to minimize such reliance and eliminate ambiguity. But the complete eradication of

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tion (Princeton 1997); *see also* Lawrence Solan 117 *The Language of Judges* (Chicago 1993).

[3] John Searle, *Expression and Meaning*, *passim* (Cambridge Univ. 1979); Dan Sperber and Deirdre Wilson, *Relevance: Communication and Cognition*, *passim* (Harvard 1986); Robyn Carston, *Thoughts and Utterances: The Pragmatics of Explicit Communication* (Blackwell 2002); François Récanati, *Literal Meaning* (Cambridge 2004); Stephen Neale, *Pragmatism and Binding*, *passim*, in Z. Szabó-Gendler *Semantics and Pragmatics* (Oxford Univ. 2005); Stephen Neale Expert Report of Stephen Neale submitted by Defendant Attorney General Alberto R. Gonzales at 93-102, in *ACLU v. Gonzales*, 478 F. Supp. 2d 775 (E.D. Pa. 2007), *aff'd*, 534 F.3d 181 (3d Cir. 2008).

[4] Oliver Wendell Holmes, Jr., *The Essential Holmes*, 297 (1899), Ed. Richard A. Posner (Chicago Univ. 1997).

[5] Lawrence Solan 118-21 *The Language of Judges* (Chicago Univ. 1993)

ambiguity is rare, if possible at all.[6] Therefore, appeals to linguistic context and pragmatic principles of interpretation are essential in determining the plain meaning of statutory language.

A. Tools and Results of Linguistic Theory Provide a Principled Rationale for Determining the Plain Meaning of Statutory Language

Linguistic theory, the philosophy of language and cognitive science provide a concrete framework, within which it is possible to articulate a principled rationale for determining the plain meaning of statutory language. These "linguistic tools" include the theories of grammatical structure, linguistic context and pragmatic inference. The absence of such a framework has hampered the Court's ability to provide rules in the consistent interpretation of the plain meaning of statutory language, particularly in cases where the Court is analyzing potential restrictions on phrases introduced by quantifier words, such as "any" and "some."

1. The Limitations of Grammatical Structure in Determining Plain Meaning

Grammatical structure, as determined by linguistic theory, can impose limitations on the interpretation of text. Sometimes the interpretation of a

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[6] *See,* Dan Sperber and Deirdre Wilson, *Relevance: Communication and Cognition*, 191-93 (Harvard 1986); Sperber Robyn Carston, *Thoughts and Utterances: The Pragmatics of Explicit Communication*, 64-78 (Blackwell 2002); François Récanati, *Literal Meaning* 83-86 (Establishing that sentences are irreducibly context-sensitive.) (Cambridge 2004). One is reminded again of J. Holmes' talk of "play in the joints" *Supra*.

given expression is determined unambiguously by a fact of grammar. Other times, the very same expression has its interpretation only narrowed by grammar. Contrast the following examples:

1. John said Paul shaves himself.

2. John told Paul about himself.

In example 1, the rules of English grammar dictate that "himself" must look back to "Paul" for its interpretation. By contrast, example 2 is ambiguous: "himself" may look back to either "Paul" or "John." So interpreting "himself" in example 2 requires going beyond what is given by word meaning and grammar, *i.e.*, it requires appealing to context. When the courts are attempting to garner the plain meaning of statutory language, word meaning and grammatical structure may provide sufficient restrictions on the interpretation, but often, this is not the case.

For example, in *Ali v. Federal Bureau of Prisons*, the court was asked to determine the meaning of the phrase "any other law enforcement officer" as it was used in a provision of the Federal Tort Claims Act ("FTCA"). The majority correctly observed that, "read naturally, the word 'any' has an expansive meaning, that is, 'one or some indiscriminately of whatever kind.'"[7] However, the combined force of syntactic theory, semantic theory and pragmatic theory dictate that whenever there is an implicit restriction to be found on the interpretation of a qualifier phrase introduced by "any," it is not on the interpretation of "any," but on the interpretation of the ex-

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[7] *United States v. Gonzales*, 520 U.S. 1, 5 (1997) (quoting Webster's THIRD NEW INTERNATIONAL DICTIONARY 97 (1976))

pression *modified* by "any" (e.g. "other law enforcement officer").

In linguistics, logic, and philosophy, "any," along with "every," "each," "all," "no," "many," "few," "some", "most," "much," "a(n)", "the", "one," "two," "three" etc. are *quantifier* words (known as determiners). A quantifier word combines with a nominal, simple (e.g. "officer") or complex (e.g. "law enforcement officer," "other law enforcement officer") to form a *quantifier phrase*.[8] These labels highlight the fact that quantifier phrases are used to talk about quantities or proportions of individuals ("all dogs") or substances ("all beer").

Typically, a sentence containing a quantifier phrase defies sensible interpretation unless the reach of the quantifier's nominal is implicitly restricted or qualified in some way readily inferable from context.[9] This is where the Court in *Ali* and

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[8] *See* Barwise & Cooper *Generalized Quantifiers and Natural Language*, LINGUISTICS & PHILOSOPHY 4 (1981); Robert May *Logical Form: Its Structure and Derivation*, *passim* (MIT 1985); Stephen Neale, *Descriptions* 38–47 (MIT 1990); Stanley Peters & Dag Westerståhl *Quantifiers in Language and Logic*, *passim* (Oxford 2006).

[9] *See Ali v. Federal Bureau of Prisons*, 128 S. Ct. 831, 850 (2008) (J. Breyer, dissenting) ("[W]ords such as "all," "any," "never," and "none" normally rely upon context to indicate the limits of time and place within which they intend those words to do their linguistic work"); Stephen Neale, *Descriptions* 93-95 (MIT 1990) (establishing that this "is a quite general fact about the use of quantifiers in natural language" 95); Jason Stanley, *Nominal Restriction* 365-77 in G. Preyer & G. Peter (eds.) *Logical Form and Language* (Oxford 2002) (establishing that restrictions on the interpretation of quantifier phrases are the products of restrictions on the interpretation of their nominals).

other instances, such as *Gonzales*[10] and *Harrison v. PPG Industries, Inc.*, could have benefited from drawing on linguistic theory.[11]

For example, in footnote 4 in *Ali*, the Court referenced cases in which the Court correctly focused its analysis on the whole quantifier phrase, comprising the quantifier and the nominal, when determining the implicit restriction and not on the quantifier word "any."[12] The analysis of the cases in footnote 4 drew upon immediate linguistic context in identifying the correct restriction because in those cases the Court appreciated that the content of the restriction on the reach of the quantifier phrase does not derive from a restriction on the reach of "any." The Court's attempt in footnote 4 to create exceptions to the gen-

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[10] 446 U.S. 578 (1980).

[11] Examples are ubiquitous. For instance, if a law professor asks, "Can everyone see the screen?" at the beginning of a lecture in which he plans to use a projector, he is not asking whether everyone in existence can see the screen, and it would be infelicitous for someone to point out that people in the Galapagos islands cannot see the screen. In this context, his use of "everyone" is implicitly understood as if it were a compression of "everyone here" or "everyone in this auditorium." If he asks a colleague, "Under what conditions can the President appoint a Justice without Senate approval?" he unreflectively assumes the colleague takes him to mean the President of the United States rather than, say, the President of France or the President of IBM. *See* Stephen Neale, *Descriptions* 93-95 (MIT 1990) (discussing examples from which these two are adapted). See *Ali*, 128 S. Ct. at 850 (J. Breyer, dissenting) (discussing an example from which this one is adapted—his utterance of 'There isn't any butter' to his wife assumes a common sense restriction to the refrigerator, or some other contextually relevant locale, *e.g.*, the kitchen).

[12] *Ali*, 288 S. Ct. at note 4.

eral rule that "any" is expansive in meaning is unnecessary and problematic in devising a uniform and constructive application in future cases because it conflicts with what linguistic theory tells us about the nature of implicit restrictions on the interpretation of quantifier phrases.

2. The Role of Linguistic Context in Determining Plain Meaning

In many cases, linguistic context contains the information needed to identify an implicit restriction, indeed preceding material within the same clause is often all the linguistic context that is needed. Informally, the linguistic context of an expression is just nearby language in the text. This could be made more precise by specifying a domain, *i.e.*, a clearly defined portion of text within which occurs (*e.g.*, a particular phrase, sentence, paragraph). Beginning with the smallest domain as possible and expanding only as necessary constitutes a procedure for remaining as faithful to the text as possible given the necessity of invoking linguistic context in statutory interpretation.

For example, you say to your friend, "There is food in the refrigerator. Take anything you like." Your use of the second sentence would not give your friend the authority to take your wallet or your wife, or for that matter the refrigerator itself or its cooling system. What your friend is being offered is naturally restricted by common sense and your use of a specific phrase in the *first* sentence ("food in the refrigerator"), which is the relevant linguistic context.

Justice Scalia has illustrated the same point about the use of linguistic context to help disambiguate an expression: "If you tell me, 'I took the boat out

on the bay,' I understand 'bay' to mean one thing; if you tell me, 'I put the saddle on the bay,' I understand it to mean something else."[13] Indeed, according to Justice Scalia, "in textual interpretation, context is everything."[14]

From the point of view of linguistic theory, Justice Scalia is correct, context *is* everything, because without it, the notion of plain meaning has no genuine application.[15] If the Court in *Ali* had appreciated the vital role that linguistic context was playing in determining plain meaning, it would have recognized the existence of an implicit restriction on the reach of the nominal, obtained without venturing outside the text.

A modicum of linguistic context is all that was needed there: the smallest phrase properly containing "any other law enforcement officer" i.e. the disjunctive noun phrase "any officer of customs or excise, or any other law enforcement officer," which comprises two noun phrases joined by "or" – the disjunction connective "or," like the conjunction connective "and," joins two expressions of the same type to form a larger, symmetrical expression of that same type. Thus, the implicit restriction the Court should have identified – namely, *engaged in custom and ex-*

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[13] Antonin Scalia, *Common-Law Courts in a Civil Law System: The Role of United States Federal Courts in* Interpreting the Constitution and the Laws, in A Matter of Interpretation 26 (1997).

[14] *Id.* at 37.

[15] John Searle, *Expression and Meaning* 117-136 (Cambridge Univ. 1979) ("[t]he notion of the literal meaning of a sentence only has application relative to a set of contextual or background assumptions").

cise duties – is obtained with the bare minimum of linguistic context, that is, without going beyond the disjunctive noun phrase.[16]

The reason the Court failed to properly recognize this context was the Court's view that where the language is clear, there is no need to look for contextual clues as to the meaning of a word or phrase.[17] However, as discussed below, linguistic theory confirms the opposite; context is everything, and pragmatic inference is paramount when determining meaning.

3. The Importance of Rationality Assumptions and Pragmatic Processes in Determining Plain Meaning

The type of restrictions discussed in the previous sections are not limited to quantifier phrases. As confirmed by linguistic theory and cognitive science, the capacity to identify such restrictions is a product of continuously active, cognitive processes – usually called pragmatic processes – that make it possible, quite generally, to interpret utterances and texts, which by their very nature, are too impoverished to wear their complete interpretations on their sleeves[18] – even, as will be demonstrated shortly,

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[16] "[a]ny claim arising in respect of . . . the detention of any goods, merchandise, or other property by any officer of customs or exercise or any other law enforcement officer." *Ali* at 831.

[17] *See Ali*, at 840. ("The Court [are] unpersuaded by Petitioner's attempt to create ambiguity where the statute's text and structure suggests none.").

[18] *See* Dan Sperber & Deirdre Wilson, *Relevance: Communication and Cognition*, 188-193 (Harvard Univ. 1986); Robyn Carston, *Thoughts and Utterances: The Pragmatics of Explicit Communication* (same) (Blackwell 2002); John Searle, *Expression and Meaning* 117-136 (Cambridge Univ. 1979) ("[t]he notion of the literal meaning of a sentence only has application

when produced by lawyers or legislators bent on making the text as unambiguous as possible. In many everyday situations, the exercise of our capacity to identify implicit restrictions on the interpretation of nominals is so fast, automatic, seamless and effortless that it is simply taken for granted, if noticed at all.[19] Moreover, the capacity is not tailored specifically to the interpretation of nominals: If my daughter falls and hurts her knee, I may say, if she is still crying after an unreasonable amount of time, "You're not going to die," and whatever she may think at the time, I am not claiming she is immortal.[20]

Whenever the Court appeals to certain canons of statutory interpretation, such as *ejusdem generis*, *noscitur a sociis*, *expressio unius est exclusio alterius* and the rule against superfluities, it is tacitly deploying an important part of linguistic theory called pragmatics, which characterizes the rational cogni-

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relative to a set of contextual or background assumptions", 117); Lawrence Solan passim. *The Language of Judges* (Chicago Univ. 1993) ("the relationship between words and events in the word is underdetermined by our knowledge of the words" 185); Stephen Neale, *On Location*, in M. O'Rourke & C. Washington, *Situating Semantics* 284-302 (2007). Stephen Neale Expert Report of Stephen Neale submitted by Defendant Attorney General Alberto R. Gonzales at 93-102, in *ACLU v. Gonzales*, 478 F. Supp. 2d 775 (E.D. Pa. 2007), *aff'd*, 534 F.3d 181 (3d Cir. 2008) 60-79.

[19] *See* Dan Sperber & Deirdre Wilson, *Relevance: Communication and Cognition*, 65-117 (Harvard Univ. 1986); Dan Sperber & Deirdre Wilson, *Spontaneous Deduction and Mutual Knowledge* 179-84 (1990) *Behavioral and Brain Sciences* 13; Robyn Carston, *Thoughts and Utterances: The Pragmatics of Explicit Communication, passim* (Blackwell 2002).

[20] *See* Kent Bach, *Conversational Impliciture Linguistics and Philosophy*. 28-9 (1994) *Mind & Language*, 9

tive processes involved in all linguistic interpretation.[21] Plain meaning cannot be obtained without employing the type of context-based reasoning characterized by pragmatic theory.

For example, in *Ali*, the Court first attempted to assign plain meaning to the phrase "any other law enforcement officer" before taking into account the linguistic context and the type of context-based reasoning that cognitive science has demonstrated is involved in all interpretation. The Court seems to tacitly assume that the process of interpreting statutory language can defy the natural order and process established by cognitive science and linguistic theory, and consequently the Court's process does not mimic the way people actually interpret text. The Court thereby denied itself the opportunity of obtaining an accurate interpretation of the quantifier phrase "any other law enforcement officer," because an accurate interpretation of the plain meaning of text simply cannot be determined without first exploring whether the reach of the nominal is implicitly restricted.

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[21] *See* Paul Grice, *Studies in the Way of Words*, *passim* (Harvard Univ. Press 1989) (identifying the rational basis of certain general interpretive maxims governing the quantity, quality, relevance, and mode of presentation of information in distinct contexts); *See* Dan Sperber & Deirdre Wilson, *Relevance: Communication and Cognition*, 65-117 (Harvard Univ. 1986); Dan Sperber & Deirdre Wilson, *Spontaneous Deduction and Mutual Knowledge* 179-84 (1990); *Behavioral and Brain Sciences* 13; Robyn Carston, *Thoughts and Utterances: The Pragmatics of Explicit Communication*, 15-221 (Blackwell 2002).

II. Utilizing Linguistics and the Philosophy of Language, This Court Should Find That The Plain Meaning of Proviso Two of § 1503 of EWSAA Did Not Give The President Authority to Divest the Federal Courts of Jurisdiction

A. Petitioners' Appeals to Discussions Of The Meaning Of "Any" In Opinions Of This Court Are Spurious.

Proviso two of § 1503 of the EMERGENCY WARTIME SUPPLEMENTAL APPROPRIATIONS ACT of 2003 ("EWSAA") reads, "the President may make inapplicable with respect to Iraq section 620A of the Foreign Assistance Act of 1961 or any other provision of law that applies to countries that have supported terrorism." ("Proviso Two") Petitioners and Respondents place considerable weight on the interpretation of the noun phrase "any other provision of law that applies to countries that have supported terrorism." So does the United States in its Brief as Amicus Curiae.

The Petitioner purports to rely on this Court observations concerning phrases of the same basic grammatical form as "any other provision of law . . ."—specifically, "any other term of imprisonment" (*Gonzales*, 520 U.S. 1, 5 (1997)), "any other final action . . ." (*Harrison v. PPG Indus. Inc.*, 446 U.S. 578, 588 (1980)) "any other law enforcement official" (*Ali*, 128 S. Ct. 831). The Petitioner argues that there is no need to consider linguistic context because the word "any" is expansive in meaning, that "any" means *any*, and that the analysis should end there. Petitioners appear to assume that if there is any sort of restriction, it is on the interpretation of the word "any." But Petitioner ignores the fact that, pursuant to linguistic theory, an implicit restriction is not on

the interpretation of the quantifier "any," but on the interpretation of the nominal that it modifies, "other provision of law that applies to countries that have supported terrorism." Moreover, by focusing on the word "any," Petitioner concluded that there are no restrictions whatsoever on the whole quantifier phrase.

Ironically, Petitioner tacitly *assumes*, contrary to what Petitioner explicitly states, that there is some type of restriction. As noted by Respondents, the phrase "any other provision of law that applies to countries that have supported terrorism," as it occurs here, is tacitly understood as *not* including, for example, *Russian* law, or for that matter *Iraqi* law. The fact that some implicit assumptions are so obvious underscores the need for the explicit use of linguistic context and pragmatic processes to identify implicit restrictions on the interpretation of nominals.

Thus, consistent with what Petitioner *assumes,* but inconsistent with what Petitioner *states*, the reach of "any other provision of law that applies to countries that have supported terrorism" as it occurs in Proviso Two is restricted *at least* to *United States* law—despite the fact, also noted by Respondents, that the more specific phrase "any other provision of *United States* law that applies to countries that have supported terrorism" could have been used by Congress in wording proviso two, but was not. The recognition of this restriction is an example of the unreflective use of pragmatic principles in the interpretation of quantifier phrases. Put simply, "any other provision of law . . ." defies a sensible interpretation here without such a restriction.

B. Competing Grammatical Structures of Proviso Two And Their Semantic Consequences Leads to the Conclusion that Proviso Two Is Inherently Ambiguous

Three points about the syntactic structure of the sentence Congress used to state proviso two are relevant to the present case; and at an appropriate level of detail, none of the three is uncontroversial.

1. Structure of Quantifier Phrases

As already noted, "any other provision of law that applies to countries that have supported terrorism" is quantifier phrase. And quantifier phrases, proper names, and pronouns are all species of noun phrases. A quantifier phrase, as also noted earlier, is made up of a quantifier and a nominal, which may be syntactically simple (*e.g.*, "provision") or syntactically complex (*e.g.*, "provision of law", "other provision", "other provision of law", or "other provision of law that applies to countries that have supported terrorism").

2. The Structure of Nominals

Matters are more complicated when we turn to the syntax of the nominal itself in the second disjunct of Proviso Two because a syntactic ambiguity—an ambiguity of *scope*, as it is usually called—must be resolved. Approaching the matter through a simpler example involving a sign is again helpful. Consider a sign outside a park that reads, "SMALL CHILDREN AND PETS NOT ADMITTED." The rules of grammar license two distinct parsings to the "small children and pets" depending upon whether "pets" is within the scope of "small" (in less theoretical terms, depending upon whether small modifies the simple nominal "children" or the conjunctive nominal "chil-

dren and pets." Using square brackets to group expressions in a way that distinguishes the parsings, "small children and animals" may be parsed in either the following ways:

[small children] and pets

small [children and pets].

Parsed in the first way, the sign outside the park expresses a prohibition on the entry of both pets and small children; parsed the second way it expresses a prohibition on the entry of *small* pets and small children—pet elephants, for example, are not barred from entry. There are two points to appreciate here: (i) the ambiguity is a direct consequence of English syntax; (ii) the fact that, *ceteris paribus*, one meaning is more plausible than the other in connection with the sign outside the park just underscores the point that commonsense, context and background have already kicked in below the radar during the fast, automatic, seamless and effortless exercise of our capacity to disambiguate.

Neither Petitioner nor Respondents noticed that, independently of any debate about implicit restriction on the nominal "other provision of law that applies to countries that have supported terrorism," there is an ambiguity of scope to consider *within* the nominal itself, and that in consequence, the rules of grammar license two distinct parsings, each associated with a slightly different meaning.[22] When these ambiguities are brought out, the paucity of Petitioner's linguistic arguments for the interpretation of Proviso Two that they appear to favor is magnified.

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[22] The introduction of the "other" creates additional ambiguity of the same type.

Scope ambiguity in the nominal is a consequence of the fact that the restrictive relative clause "that applies to countries that have supported terrorism" may modify the complex nominal "provision of law" or the simple nominal "law." Using "ϕ" as shorthand for "countries that have supported terrorism," we can distinguish these parsings thus:

(i) [provision of law][that applies to ϕ]]

(ii) provision of [law [that applies to ϕ]]

While the difference between the meanings associated with the two parsings of "small children and animals" is quickly spotted by native speakers, the difference between the meanings associated with the two parsings of "provision of law that applies to countries that have supported terrorism" is subtle: a provision falls within (ii) as long as the it is contained within a law that applies countries have supported terrorism, whether or not that provision itself applies to countries that have supported terrorism. By contrast, a provision falls within (i) only if the provision itself applies to countries that support terrorism.

3. Minimal Linguistic Context

Because the interpretations of (i) and (ii) are not equivalent in meaning, linguistic context must be invoked to disambiguate the statutory language. In accordance with the principle of linguistic context immediacy (beginning with the smallest domain as possible), the first linguistic context to consider is the smallest constituent of the text that contains "other provision of law that applies to countries that have supported terrorism" as a proper part, i.e. "section 620A of the Foreign Assistance Act of 1961 or

any other provision of law that applies to countries that have supported terrorism."

Furthermore, the absence of a comma before "or" confirms that the disjunctive noun phrase is self-contained and, in fact, the smallest linguistic constituent of text properly containing "any other provision of law that applies to countries that have supported terrorism."

C. Using Pragmatic Principles to Determine Plain Meaning of *Statutory Language*

As already noted, it is incontrovertible that the occurrence of "any other provision . . ." in Proviso Two is implicitly restricted in *some* way; the question at issue concerns the precise form of the restriction.

As explained above, the smallest linguistic context that needs to be analyzed is the disjunctive noun phrase "section 620A of the Foreign Assistance Act of 1961 or any other provision of law that applies to countries that have supported terrorism." The next step is to apply appropriate canons of statutory interpretation whose plausibility derives from more general pragmatic principles articulated in linguistic theory.[23]

The canon of *noscitur a sociis*, as applied here, instructs the reader to comprehend words within their context – that is, in harmony with neighboring words in the smallest linguistic context. Here, the expression "Section 620A of the FAA of 1961" provides the relevant contextual cues for interpreting the phrase "any other provision of law that applies to

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[23] *See* footnote 21.

countries that supported terrorism." Therefore, an understanding of the contents of the Section 620A of the FAA of 1961 is required in order to understand the nature of the restriction. This would be similar to consulting a dictionary to understand the meaning of a word. Section 620A lists statutes that all involve foreign assistance, which is not surprising because it is named the Foreign Assistance Act. Thus, "any other provision of law that applies to countries that supported terrorism" is understood to plainly mean other provisions of law that involve foreign assistance.

Moreover, the canon of *ejusdem generis* directs the reader of a catch-all term that follows more specific terminology to confine the catch-all to items no broader than the specific term. Here, the expression "Section 620A of FAA of 1961" is the more specific term in the disjunctive noun phrase and, similar to the analysis above, provides the context to interpret the plain meaning of the phrase "any other provisions of law that applies to countries that have supported terrorism" to be restricted to other provisions of law that involve foreign assistance.

The rule against superfluities, which instructs the Court to interpret a statute to effectuate all of its provisions, so that no part is rendered superfluous, also supports this interpretation of Proviso Two. The rule against superfluities is a consequence of a well established and fully general pragmatic principles.[24]

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[24] *See* Paul Grice, *Studies in the Way of Words*, *passim* (Harvard Univ. Press 1989); *see also* Dan Sperber & Deirdre Wilson, *Relevance: Communication and Cognition*, 65-117 (Harvard Univ. 1986); Dan Sperber & Deirdre Wilson, *Spontaneous Deduction and Mutual Knowledge* 179-81 (1990); *Behavioral and Brain Sciences* 13.

In this instance, the plain meaning of the phrase is not fully appreciated if the Court ignores the role of the connection between the two halves of the disjunctive noun phrase.

The rejection of these canons of statutory interpretation would be tantamount to rejection of what linguistic theory has established about the role of pragmatic principles in ascertaining plain meaning.

CONCLUSION

For the foregoing reasons, this Court should affirm judgments of the Court of Appeals.

Respectfully submitted,
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